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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,375	11/12/2003	Jonathan Paul Brennan	9098	6385

27752 7590 09/07/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL BUSINESS CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER
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LONEY, DONALD J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/706,375

Applicant(s)

BRENNAN ET AL.

Examiner

Donald Loney

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 18-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as presented in the last office action, mailed March 20, 2006.

In claim 18 it is unclear as to what the valleys and land areas are. The figures do not show a pattern of valleys which are interconnected. If the valleys are interconnected then it would appear they would be a continuous network and not a plurality of valleys as recited by the applicant by referring to valleys (i.e. being plural). Also, the size of the valleys would then just appear as to how much (i.e. the size) of the web one is looking at. This rejection is being made since it is difficult to ascertain what structure the applicant means by the recitation of valleys and land areas and how the valleys are interconnected.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 18-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Trokhan et al (5895623) as presented in the last office action, mailed March 20, 2006.

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8. Trokhan et al teaches a hydroentangled web comprising fibers of .04-2 inches (1-50.8mm). The web has a valley (the light area in figure 5) and land area (the dark area in figure 5) configuration. The individual land area is disclosed as being greater than  $0.1\text{mm}^2$  to more than  $7\text{mm}^2$ . The examiner notes that Trokhan et al refers to these areas as apertures, however, in column 11, lines 63-65, it is disclosed that the apertures have few fibers extending there over. Therefore, the examiner deems this to read upon applicants' land region as recited since there would at least be a few fibers therein in order to form the land area as recited. Refer to column 4, lines 23-39, column, 5, lines 27-33, column 10, lines 55-63, column 12, lines 58-67 and column 13, lines 16-22. As explained above, since it is difficult to understand what the land and valley areas are, it is the examiners position that if one only looks at  $8\text{mm}^2$  of the web (or any section containing an area as recited) and the land area is  $0.1\text{mm}^2$  than the valley area would inherently be within  $0.1\text{mm}^2 - 8\text{mm}^2$  since some of the area would be land and some would be valley. In the absence of inherency it would have been obvious to one having ordinary skill in the art at the time the invention was made to form valley areas of the recited size since this would only involve a change in shape and/or size which is generally considered within ordinary skill in the art. See MPEP 2144.04IV. The examiner also notes the screen shown in figure 3 of Trokhan et al is the same screen shown in instant figure 4, which is used by the applicant to form the web containing land and valley areas. The added composition of claim 22 to the web would be obvious motivated by the fact known diaper wet wipes have a liquid solution therein.

***Response to Arguments***

9. Applicant's arguments filed June 20, 2006 have been fully considered but they are not persuasive. The applicant argues that the raised portions in figure 9 are the land areas and the lowered portions are the valleys in the claims. While this can be seen from the figure, it is still unclear as to how the valleys are connected. This figure does not show connected valleys, they all appear independent. Also, it is unclear if there are a plurality of valleys as recited and where are they located? Are they an area all around the base of each land area? If so, then how are there a plurality thereof and how is the plurality thereof interconnected. As stated previously, if the valleys are interconnected then it would appear they would be a continuous network and not a plurality of valleys as recited by the applicant by referring to valleys (i.e. being plural). In response to the argument that the applicant's web does not contain holes, this argument is not commensurate in scope with the claims since the claims fail to recite this, or any other distribution of fibers that would distinguish over Trokhan et al disclosing a few fibers being located in the aperture, or land, region (see column 11, lines 63-65). The rejection over Daponte in view of Trokhan et al is withdrawn in view of the applicant's arguments filed in the last response.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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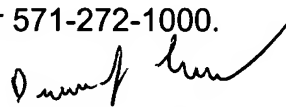
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Donald Loney  
Primary Examiner  
Art Unit 1772

DJL:D.Loney  
09/02/06